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Committee against Torture
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Summary record of the 1305th meeting
Held at the Palais Wilson, Geneva, on Wednesday, 29 April 2015, at 3 p.m.

Chairperson: Mr. Grossman

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Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Sixth periodic report of Spain (continued) (CAT/C/ESP/6; CAT/C/ESP/Q/6; HRI/CORE/ESP/2010)

1. *At the invitation of the Chairperson, the delegation of Spain took places at the Committee table.*

2. **The Chairperson** invited the members of the delegation of Spain to reply to the questions put by Committee members at the 1302nd meeting.

3. **Mr. Acón Ortego** (Spain), referring to the discussion of "public official" and "intimidation or coercion" in the State party's report (CAT/C/ESP/6), said that the definition of "public official" in Spanish law was broad and covered anyone carrying out official duties, and the definitions of "intimidation or coercion" and of torture were already sufficient to cover any conduct that might be deemed coercive torture. That was why the concepts of intimidation and coercion were not specifically included in the definition of torture.

4. When it constituted an act of gender violence, an isolated act of torture could be punished: there was no requirement that the behaviour should be habitual. The gender element constituted an aggravating circumstance.

5. The concept of torture in Spanish law was broader than the definition under article 1 of the Convention insofar as it did not require the infliction of "severe" pain or suffering. All acts of torture were deemed serious offences: the penalty handed down was determined by the degree of severity of the act.

6. Two Supreme Court judgements were relevant: No. 601/2013, which demonstrated the scope of the definition of torture in Spanish law, and No. 774/2007, illustrating the application of the criterion of severity in sentencing practice.

7. A further example of judicial practice was the conviction for torture, in 2012, of a man who was now serving a prison term of 1 year, 6 months. It was to be noted that the person had been performing official duties on contract — and therefore, crucially, was not a public official per se, which showed the scope of the definition of "public official" — and that the sentence had not been suspended as it could have been, reflecting the seriousness with which the courts viewed the offence of torture.

8. Torture was not subject to the statute of limitations unless it was deemed a crime against humanity.

9. The amended Criminal Code was due to enter into force on 1 July 2015. It introduced new protections for victims of gender violence and racism, among other things, and also defined a new offence of enforced disappearance.

10. Referring to paragraph 40 of the list of issues, regarding civil detention, he said that the Constitutional Court had found the current legislation unconstitutional insofar as it took the form of an ordinary act of law, whereas what was required was a law with the rank of organic act. The legislation would accordingly be amended and in fact would ultimately be incorporated into the amended Civil Proceedings Act.

11. A reform of the judiciary was planned. The draft organic act on the judiciary included, among other improvements to the judicial system, the requirement for forensic physicians to have a special qualification in forensic medicine. In that connection, he said that the provision in the Government's Human Rights Plan to permit the ex officio appointment of a second doctor to conduct an independent examination of an

incommunicado prisoner had not been implemented. However, a second doctor could be designated by a prisoner, even a prisoner being held incommunicado.

12. **Mr. León Cavero** (Spain) said that the Convention formed part of the Spanish legal order and was directly applicable in the courts. In addition, the Constitution provided that all legislation governing constitutional rights and freedoms was to be interpreted in accordance with the Universal Declaration of Human Rights and the international treaties ratified by Spain.

13. Numerous court rulings had granted protection to persons seeking a thorough investigation into allegations of torture, and the Constitutional Court had ruled that courts were to take special care to thoroughly investigate all such allegations and not close any case until all relevant evidence had been examined. Recent Constitutional Court judgements had made exhaustive reference to international human rights instruments as a basis for protecting individuals against torture.

14. As to extradition and diplomatic assurances, he said that under Spanish law extradition would not be granted if the requesting State failed to provide the relevant guarantees against execution or torture. That applied equally to the refoulement of asylum seekers. The second phase of the extradition procedure was a judicial procedure and the Constitutional Court had declared article 3 of the Convention binding on all Spanish courts. Even where the requesting State was a democratic one and had given the relevant assurances, extradition would still be denied if it was clear that there was a risk to the person's life or physical integrity.

15. As to victims' rights, he said that article 14 of the Convention was fully applicable. Spanish law provided for full protection for the rights of victims of any kind of violent crime and, in addition, for proper reparation to be made where harm resulted from acts of the administration. That legislation had been found to be effective by the European Court of Human Rights. Moreover, Spain always made immediate settlement whenever the European Court of Human Rights itself ordered compensation to be made.

16. **Ms. Martínez Arrieta** (Spain) said that the pardon was a measure of clemency granted at the Government's discretion. It extinguished, in part or in full, the individual's criminal liability, but did not affect the offence committed or the convicted person's guilt or civil liability. The granting of pardons to officers of the Mossos d'Esquadra in a torture case in 2012 had been an exception, but the provisions on pardons had been reviewed and a senior Ministry of Justice official would now be required to inform Congress on the granting of pardons.

17. All the Ombudsman's recommendations on issues of criminal procedure had been adopted. European Union directives 2010/64/EU, on the right to interpretation and translation in criminal proceedings, and 2012/13/EU, on the right to information in criminal proceedings, had been transposed into the Criminal Procedure Act, and a further amendment to the Act had been drafted to strengthen procedural guarantees and regulate the use of technology in investigations.

18. She said that incommunicado detention was an exceptional measure, as mentioned in the State party's report. In the criminal procedure reform process it had been decided not to abolish the possibility of restricting the detainee's right to communicate with others, but to introduce stricter safeguards. Thus, whereas under the current provision basic rights were automatically suspended when a person was held incommunicado, the revised text would instead make the suspension of some or all of those rights a discretionary measure to be decided by the court. As to minors being held in incommunicado detention, additional protections had been introduced into the legislation on minors' criminal responsibility.

19. More generally, persons deprived of liberty now had the right to contact a lawyer within a maximum of three hours rather than eight hours as previously, and the right to receive information in writing on the charges against them. Detainees were now permitted to speak in private with a lawyer both before and after making a statement.

20. The new law on the status of victims of crime covered both direct and indirect victims and made explicit reference to victims of torture. It gave all such victims special rights in criminal proceedings and enabled the victims of torture to seek special protection against anyone who might represent a danger to them on their release.

21. **Mr. Rueda Jiménez** (Spain) said that a new database of statistics on police malpractice had been created as the Committee had recommended. Torture statistics were collected separately. It was clear from the statistics gathered that the training now being given to the police was bearing fruit, since the number of complaints had declined by over 50 per cent during the past three years.

22. Video recording equipment had now been installed in two thirds of police custody units, and inspections being carried out under the Ministry of the Interior were assisting the process of standardization of the infrastructure in police stations.

23. The number of suicides in prisons had dropped sharply over the past seven years and the level was now below the European average. A suicide prevention programme introduced in March 2014 emphasized staff training, proactive intervention and coordination between the relevant services.

24. The prison population had fallen by 9,000 in four years, not least owing to the increased use of alternative non-custodial measures, of which over 144,000 had been ordered by the courts in 2014, as compared with 800 in 2000.

25. In Spain, prisoners were not categorized by region of origin. In addition, there were many prisoners born in the Basque Country who had nothing to do with Euskadi Ta Askatasuna (ETA), and since the Basque people themselves were the primary victims of that group's campaign of terror, the term used by Mr. Gaye, "Basque prisoners", struck the delegation of Spain as somewhat regrettable. Perhaps Mr. Gaye had been referring to terrorists who had been given prison sentences for belonging to or assisting ETA, not all of whom were Basque. In any event, the authorities held ETA and other terrorists in prisons dispersed throughout the country in an attempt to favour the prisoners' reintegration and break their ties to the criminal organization. The tactic was fully compliant with the Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders.

26. Only a coordinated international response would grant legitimacy to the initiatives that would have to be taken in the area of immigration. Ceuta and Melilla, for their part, were facing unprecedented migratory pressure, which sometimes led to violence, particularly when large numbers of would-be migrants stormed the borders. The migrant appearing in a video recording of an incident referred to by Mr. Gaye had turned out to be unharmed. Six members of the Civil Guard had been injured, however, one of them seriously. There was no knowledge of any further incident in April 2014. The events on El Tarajal Beach in 2014 were the subject of a judicial investigation that was still under way.

27. Since 2013, crowd control had been the responsibility of police units whose members wore highly visible identification on their body armour. In 2013, riot control weapons had been used in only about 20 of the more than 6,000 demonstrations that had been held in the country. No bill was being drafted that would lead to the detention of journalists who interfered with the law enforcement authorities. What the Spanish parliament had passed was a law, set to enter into force on 1 July 2015, that would penalize

the malicious diffusion of images of the members of the law enforcement and security forces.

28. **Mr. Palomo del Arco** (Spain) said that all the country's courts required that evidence should be obtained lawfully. The requirement that it should be submitted in oral proceedings was an initial safeguard against the admission of statements made outside the courts. Precedent had made it entirely clear that confessions obtained in police facilities could not be used in court. In one instance, the Supreme Court had even overturned a guilty verdict not because it had found that the evidence for the verdict returned by the lower court had been obtained under torture, but because there had been indications that it could have been thus obtained. The country's highest courts, including the Constitutional Court, had consistently ruled that incriminating statements made in incommunicado detention and under torture were inadmissible. They had also ruled that evidence obtained through any form of coercion, including pressuring defendants to cooperate with the investigating authorities or face legal consequences detrimental to their interests, would not be taken into consideration.

29. **Ms. Guajardo** (Spain), replying to a question about allegations that the Public Prosecution Service did not support persons who reported torture or ill-treatment or take an active role in investigating those reports, said that in the Spanish judicial system the role of the Public Prosecution Service was not to act as lead investigator. Complaints could nonetheless be submitted to the Service, which would then undertake preliminary investigations to determine whether there was sufficient evidence to bring an action before the courts. The Public Prosecution Service was highly responsive to the victims of any crime, and for that reason it had a specialized prosecutor for victims' rights with assistants in each of the Service's provincial offices. In 2011, a post had been created for a specialized prosecutor for equal treatment and against discrimination, in part to combat what was commonly referred to as hate crime. Statistical information on offences that fell within the scope of the Convention, broken down by category of offence and type of legal proceeding, was available on the Public Prosecution Service's website.

30. The prosecutor responsible for the case of a woman who had been wounded by a rubber bullet allegedly fired by a member of the riot police during a demonstration in Madrid had sent three reports detailing the evidence that had been gathered to the Ombudsman. She offered to provide the prosecutor's reports to the Committee. The investigation of the case of Ester Quintana, who had lost an eye to a rubber bullet fired during a demonstration in Barcelona had recently concluded, and the prosecutor would very shortly be filing charges.

31. The Constitutional Court had often granted applications for *amparo* filed by the Public Prosecution Service, some of which had related to persons held in incommunicado detention. In its 2013 annual report, the Public Prosecution Service had proposed that the provisions for incommunicado detention included in the Act on the criminal responsibility of minors should be repealed. In any event, since 2007, the Service had consistently denied requests from law enforcement authorities to place minors in incommunicado detention.

32. **Mr. Coria Rico** (Spain) said that the delegation welcomed Mr. Gaye's remarks on racial profiling and circular No. 2/2012, which had clarified an earlier circular regarding identity checks. Article 16 of Organization Act No. 4/2015, set to enter into force on 5 July 2015, stated that identity checks must respect the principle of proportionality, equal treatment and non-discrimination. When migrant women in an irregular situation reported abuse, any expulsion proceedings that had been initiated against them were suspended. In recent years, more than 70 per cent of the applications for residence and work permits on the grounds of gender-based violence had been accepted. In accordance with Spanish law and article 3 of the Convention, asylum seekers were not returned or expelled until their

cases had been resolved. An expedited procedure, including free legal aid, applied to those who sought asylum at border crossings or in holding facilities for foreign nationals.

33. **Ms. Sosa Erdozain** (Spain) said that the identification of victims of torture was made possible by the joint efforts of the Ministry of the Interior and the Ministry of Employment and Social Security. While their applications were being examined, asylum seekers could receive services at reception centres that belonged either to the General Secretariat for Immigration and Emigration or to subsidized NGOs and were staffed by specialists in a number of relevant fields. In addition to their academic preparation, those specialists had received specific training on working with asylum seekers who were victims of torture and on documenting evidence of torture and other cruel, inhuman or degrading treatment or punishment. Review of applications for asylum took the diagnoses produced by those specialists into consideration, and the officials responsible for reviewing them had taken part in a workshop on the Istanbul Protocol. Lastly, she said that there were no data on the number of asylum seekers who had been victims of torture or were at risk of being tortured. Spain, following guidelines issued by Eurostat and the European Asylum Support Office, kept records only of such aspects as the nationality and number of asylum seekers.

34. **The Chairperson** (Country Rapporteur) asked what penalties an offence classed as an assault on freedom would incur and what the applicable statute of limitations would be. He took it that the Convention was directly applicable in the Spanish legal system and wondered whether the delegation could provide examples of any legal cases in which an article of the Convention other than article 12 had been referred to. Information on the Spanish authorities' views of the obligations of States parties to undertake investigations or extraditions would be especially welcome. He requested additional data on the number and outcomes of investigations of alleged cases of torture, at least one of which had led to what appeared to be a very lenient prison sentence.

35. In connection with enforced disappearances, he asked whether Spain had incorporated the notion of an ongoing offence into its domestic law. He wished to know what Spain had done when diplomatic assurances received from a State to which it had expelled a non-national had not been honoured. What exactly had those assurances consisted of?

36. He welcomed the initiative to expand video recording efforts to all the country's detention facilities but wondered why it did not include migrant holding centres in Ceuta and Melilla. Amnesty International had reported that it had been denied access to those centres. Regarding the Public Prosecution Service and without intending to cast doubt on the importance of its role, he asked what had been done to identify suspected perpetrators of violence within the ranks of the law enforcement and security forces. Lastly, he voiced concern that a law prohibiting the "malicious diffusion" of an image could be interpreted so broadly as to prevent journalists from doing their job.

37. **Mr. Gaye** (Country Rapporteur), referring to paragraph 37 of the list of issues concerning compensation for victims of torture and ill-treatment, said that the delegation had supplied information concerning compensation pursuant to a decision by the European Court of Human Rights but had failed to provide statistical data on the domestic compensation system.

38. Statistical data from the National Human Rights Plan concerning complaints of police misconduct had been provided in the annexes to the report. However, additional information concerning convictions and sentences for torture or ill-treatment was required.

39. He was pleased to hear that an investigation had been ordered into the tear-gas injuries suffered by migrants in Melilla in April 2014.

40. He had asked the delegation to provide examples of legal proceedings in Spanish courts based on the Constitutional Court's directive concerning complaints of ill-treatment by law enforcement officers.

41. He welcomed the fact that enforced disappearance had now been recognized as a criminal offence. However, the Committee had received complaints concerning the lack of State support for people searching for the remains of loved ones who had disappeared during the Civil War and the Franco dictatorship.

42. **Mr. Bruni** said that he had requested information concerning the recent imposition of solitary confinement as a disciplinary sanction in prisons for periods that exceeded the statutory 14-day limit. He had also asked whether the adverse impact on the health of detainees was taken into consideration in such cases.

43. **Mr. Modvig** welcomed the use of the Istanbul Protocol to identify torture victims among asylum seekers. The report, however, mentioned only three cases in which investigations to assess applicants' physical and psychological state had been conducted. He asked whether Spain applied or intended to apply the so-called "hot expulsion" procedure and, if so, how it could ensure that torture victims were identified.

44. He repeated his question regarding the State party's response to the 292 reported cases of torture and ill-treatment by law enforcement officers between 2009 and 2012.

45. Referring to the principle of universal jurisdiction, he said that the Committee had been informed that Spain was reluctant to transfer Spanish nationals who were alleged perpetrators of human rights violations, including torture, to Argentina.

46. **Ms. Belmir**, noting that tasers were used in Spain, said that the Committee was opposed to the use of such weapons by law enforcement officers because of the threat they posed to the health and lives of the persons targeted.

47. **Mr. Domah** welcomed the State party's intention to consider alternatives to pretrial custody. He asked whether existing laws would be amended to ensure that such custody remained the exception rather than the rule. He also wished to know whether there had been any court decisions regarding the restricted and exceptional use of incommunicado detention and pretrial custody measures.

48. **The Chairperson** asked whether the arbitrary use of force, particularly by law enforcement officers, had been defined as a criminal offence.

The meeting was suspended at 5.20 p.m. and resumed at 5.25 p.m.

49. **Ms. Cruz Fajardo** (Spain) said that the temporary migrant accommodation centres in Ceuta and Melilla were not detention centres but open facilities that provided services such as accommodation, clothing, and medical, legal and psychological assistance. The Ministry of Employment had introduced major improvements with European Union assistance in 2014, increasing the staff and enhancing the services and basic facilities.

50. The centres were regularly visited by representatives of national and international human rights bodies. They had been visited in 2013 by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and in 2014 and 2015 by representatives of, inter alia, the Office of the United Nations High Commissioner for Refugees, the World Health Organization, the European Committee for the Prevention of Torture and Amnesty International.

51. With regard to requests by women resident in the centres for voluntary termination of pregnancy, prior to 2010 abortion had been legally permissible only in cases of rape. Under more recent legislation, however, it was permissible in all cases during the first 14

weeks of pregnancy and until the twenty-second week if there was a serious risk to the woman's life or health or in the event of serious foetal abnormalities.

52. **Mr. García Jiménez** (Spain) said that, as of December 2014, there had been 40 centres for women victims of trafficking for sexual exploitation. They were located in 14 Autonomous Communities and could accommodate 354 women. There were also 120 outpatient centres in 16 Autonomous Communities. The Ministry of Health, Social Services and Equality had allocated €1.5 million to such projects in 2014 and €2 million in 2015. The project staff had contacted 34,688 women who were at risk of trafficking by means of mobile units, telephone lines and visits in 2013.

53. The Ministry subsidized, as a matter of priority, programmes providing comprehensive care for victims, awareness-raising and training programmes for professionals, and the creation of support networks.

54. Police and operational plans to combat trafficking for sexual exploitation had been submitted in April 2013. A total of 462 operations had been conducted under the plans by December 2014; 1,450 persons had been arrested; and 11,751 potential victims had been detected.

55. **Ms. Díaz Bernárdez** (Spain) said that the regulatory procedures applicable in centres for minors with behavioural or social problems guaranteed the right of the minors concerned to lodge complaints. Three bodies were responsible for monitoring compliance with their rights: the public entity for the protection of minors; the Public Prosecution Service, Minors Branch; and the Ombudsman's Office.

56. Comprehensive and disaggregated data concerning the centres were not currently available. However, she would inform the Spanish authorities of the Committee's interest in obtaining such data.

57. The Parliament was considering a draft organic law that contained a section dealing with centres for minors with behavioural or social problems. It would regulate confinement measures, medical care and minors' right to file confidential complaints with the Public Prosecution Service, the competent judicial authority and the Ombudsman.

58. With regard to the *Ali Aarrass v. Morocco* case, the Moroccan and Spanish authorities were taking joint action to implement the Committee's decision. Meetings concerning the conditions of detention of Mr. Ali Aarrass and the investigations into allegations of torture and ill-treatment had been held in 2014 with the Chairman of the Moroccan National Human Rights Council and the Chief of the Human Rights Division of the Moroccan Ministry of Foreign Affairs, and in February 2015 with the Chief Judge of the Special Criminal Issues Division of the Moroccan Ministry of Justice.

59. With regard to the *Achabal Puertas v. Spain* case, Ms. Achabal Puertas had received free assistance from the public health-care services. The Views of the Human Rights Committee had been widely disseminated and steps had been taken to reform the incommunicado detention system.

60. **Mr. León Cavero** (Spain) said that the Supreme Court had recently granted Alexandr Pavlov asylum in Spain.

61. Spain had complied with the ruling of the European Court of Human Rights in the case of *Del Río Prada v. Spain*.

62. With regard to paragraph 37 of the list of issues concerning compensation for victims of torture and ill-treatment, he assured the Committee that the Spanish justice system fully complied with that requirement. The State frequently paid compensation to victims in advance pending reimbursement by the guilty party.

63. **Mr. Acón Ortego** (Spain) said that prison sentences of 5 or 6 years could be handed down for acts of torture or ill-treatment by public officials. The statute of limitations depended on the seriousness of the crime. The maximum period under the Criminal Code was 15 years.

64. The definition of torture under article 174 of the Criminal Code was in line with article 1 of the Convention and actually offered enhanced protection, since it stated that acts causing any form of suffering, whether physical or mental, constituted torture. Many persons had been convicted under that article.

65. **Mr. Palomo del Arco** (Spain) said that 14 days was the period legally prescribed for solitary confinement. However, three successive 14-day sanctions had been declared constitutional. Prior authorization by the penitentiary judge was required for any extension beyond 40 days and a daily medical examination was obligatory.

66. Spain had drawn a distinction between torture and degrading treatment, basically in light of the perpetrator's motivation. There were far more convictions for degrading treatment than for torture.

67. The statute of limitations was not applicable to enforced disappearances unless the person concerned was found.

68. The obligation to extradite or prosecute was set forth in article 23, paragraph 4, of Organic Act No. 6/1985 on the Judiciary.

69. **Ms. Sosa Erdozain** (Spain) said that the three cases mentioned in the report in which asylum seekers had been examined to assess whether they had been tortured was not an exhaustive list. She was unfortunately unable to provide comprehensive statistical data. Asylum offices had been opened in Ceuta and Melilla in November 2014 to facilitate access to the asylum procedure.

70. **Mr. Rueda Jiménez** (Spain) said that two local law enforcement officers had been convicted of torture and sentenced to 3 years' imprisonment in February 2015.

71. **Ms. Cruz Fajardo** (Spain) said that the Public Prosecution Service was required under the Constitution to conduct effective investigations whenever it received reliable information concerning the use of violence by law enforcement officers. There must, however, be a reasonable suspicion that violence, ill-treatment or torture had occurred.

The meeting rose at 6 p.m.